

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

MICHAEL WAYNE,

Petitioner,

v.

ORDER

Civil File No. 12-549 (MJD/TNL)

STATE OF MINNESOTA,

Defendant.

Michael Wayne, pro se.

Matthew Frank, Minnesota Attorney General's Office, Counsel for Defendant.

The above-entitled matter comes before the Court upon the Report and Recommendation of United States Magistrate Judge Tony N. Leung dated March 26, 2012 [Docket No. 6], Petitioner's Application to Proceed In Forma Pauperis [Docket No. 3], and Petitioner's Motion to Appoint Counsel [Docket No. 7].

Petitioner has objected to the Report and Recommendation. Pursuant to statute, the Court has conducted a de novo review upon the record. 28 U.S.C. § 636(b)(1); Local Rule 72.2(b). After a review of the filings in this case and the

relevant law, the Court **ADOPTS** the Report and Recommendation of United States Magistrate Judge Tony N. Leung dated March 26, 2012.

Petitioner has requested that the Court appoint counsel to assist him with his petition for a writ of habeas corpus. As the Magistrate Judge noted, however, this Court lacks jurisdiction in this case. Petitioner has already filed at least two previous petitions with this Court, and Petitioner has not requested or received the necessary pre-authorization from the United States Court of Appeals for the Eighth Circuit. See 28 U.S.C. § 2244(b)(3)(A) (“Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.”); see also Burton v. Stewart, 549 U.S. 147, 157 (2007) (holding that a district court is without jurisdiction to entertain successive habeas petitions without pre-authorization). The cases cited by Petitioner, which relate to the appropriate standards to be applied to actual innocence claims, do not affect the jurisdictional pre-authorization requirement under 28 U.S.C. § 2244(b)(3)(A). See House v. Bell, 547 U.S. 518 (2006); Schlup v. Delo, 513 U.S. 298 (1995). Petitioner’s requests cannot be entertained by this Court; they must be directed to the Court of Appeals.

Accordingly, based upon the files, records, and proceedings herein, **IT IS**

HEREBY ORDERED:

1. The Court **ADOPTS** Magistrate Judge Tony N. Leung's Report and Recommendation dated March 26, 2012 [Docket No. 6];
2. Petitioner's application for leave to proceed in forma pauperis [Docket No. 3] is **DENIED**;
3. Petitioner's Motion to Appoint Counsel [Docket No. 7] is **DENIED**; and
4. Petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 [Docket No. 1] is **DISMISSED** for lack of jurisdiction.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: May 10, 2012

s/ Michael J. Davis

Michael J. Davis

Chief Judge

United States District Court